

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1235 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

=====

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

VANABEN K JAVDE

Versus

H H DIGVEERENDRASINHJI

Appearance:

MR JV DESAI for Petitioners
MR SN SHELAT for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 03/03/2000

ORAL JUDGEMENT

#. The opponent-plaintiff had filed Regular Civil Suit No.17 of 1981 in the court of the learned Civil Judge (JD) at Vansada for obtaining possession of the suit

premises on the ground that the defendant was occupying the suit premises as a tenant by paying Rs.10/- as the agreed rent per month. That deceased Kadu Iku was the tenant of the suit premises and the defendants are his heirs. That the deceased tenant was in arrears for more than 72 mnths i.e. from 1.7.75 to 30.4.81. Therefore, notice of demand was given to the defendants on 6.1.1981. But there was no reply from the defendants nor the defendants had taken any dispute of standard rent within one month of the receipt of the suit notice. Therefore, the plaintiff was compelled to file the above suit.

#. Defendant appeared in the suit by filing written statement exh.21. Defendant denied that he was in arrears of rent. During the pendency of the suit original defendant Kadu Iku had died and therefore, his heirs were brought on record.

#. From the pleadings of the parties the Trial Court has framed various issues at exh.23.

#. After hearing the arguments of both the sides and after appreciating the evidence both oral and documentary the Trial Court came to the conclusion that the case would fall under section 12(3)(a) of the Bombay Rent Act. Accordingly the Trial Court by its judgment and order dated 30.9.1983 decreed the suit. The defendants were also ordered to pay mesne profit at the rate of Rs.10/-p.m.

#. Said judgment and order of the Trial Court was challenged by the present petitioner-defendant by way of filing Regular Civil Appeal No. 48 of 1984 in the court of the learned District Judge, Valsad at Navsari.

#. The Appellate Court came to the conclusion that the case would fall under section 12(3)(a) of the Bombay Rent Act as no dispute of standard rent was raised within one month of the receipt of the suit notice. The Appellate Court also came to the conclusion that the defendant had not given any reply to the suit notice and in that view of the matter the decree of the Trial Court was confirmed.

#. I have heard the arguments of the learned advocates of both the sides. It is not in dispute that no reply was given to the suit notice by the defendant tenant. It is not in dispute that within one month of the receipt of the notice the tenant had not paid the arrears of rent to

the landlord. That no dispute of standard rent has been raised by the tenant within one month of the receipt of the suit notice. The learned Appellate Judge has found in para 12 of his judgment that the tenant has not paid rent for more than 12 months. In that view of the matter therefore the case would squarely fall under section 12(3)(a) of the Bombay Rent Act. In the circumstances, I do not find any illegality or infirmity in the judgments and orders passed by the courts below which is required to be corrected by this court while exercising revisional power. In the circumstances the Revision Application requires to be dismissed and the same is accordingly dismissed. Rule is discharged. Interim relief granted earlier stands vacated. No order as to costs.

#. At this stage Mr. Desai learned advocate for the petitioner-tenant has requested that he may be given some time for vacating the suit premises as the petitioner-tenant will have to find out alternative suitable accommodation. In the facts and circumstances I grant time upto 31.3.2002 for the purpose of vacating the suit premises on his filing usual undertaking before this court within 8 weeks from today. In the said undertaking the petitioner shall mention that he is in exclusive possession of the suit premises and that he will not transfer or alienate the suit premises to any one and without obstructing in any manner he will hand over the vacant and peaceful possession to the landlord on or before 31.3.2002. If the petitioner fails to file the undertaking within 8 weeks from today or if the petitioner commits any breach of the said undertaking it will be open for the landlord to execute the decree for possession forthwith.

(P.B.Majmudar.J)

govindan